

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

PAUL C. SWANTON and
DEBORAH A. SWANTON,
Individually and as trustee of the
Paul C. Swanton and Deborah A.
Swanton revocable trust DTD
04/27/06,

Plaintiffs,

v.

Case No.: 2:23-cv-406-JLB-KCD

AMICA MUTUAL INSURANCE
COMPANY,

Defendant.

_____ /

ORDER

This is an insurance dispute stemming from Hurricane Ian. The parties disagree on the cost to repair the property but agree that the dispute can go to appraisal, and that the appraisal will be completed in 30 days.¹ (Doc. 11.)

When an insurance policy contains an appraisal provision, “the right to appraisal is not permissive but is instead mandatory, so once a demand for appraisal is made, ‘neither party has the right to deny that demand.’”

McGowan v. First Acceptance Ins. Co., Inc., 411 F. Supp. 3d 1293, 1296 (M.D.

¹ The Local Rule 3.01(g) certification indicates that the parties have agreed on the requested relief and no response to the motion has been filed. Thus, the Court treats the motion as unopposed under Local Rule 3.01(c).

Fla. 2019) (quoting *United Cmty. Ins. Co. v. Lewis*, 642 So. 2d 59, 60 (Fla. 3d DCA 1994)). And like other stipulations about dispute resolution, the court enforces contractual appraisal provisions by non-dispositive order. See *Positano Place at Naples II Condo. Ass'n, Inc. v. Empire Indem. Ins. Co.*, No. 2:21-cv-181-SPC-MRM, 2022 WL 714809, *2 (M.D. Fla. Mar. 10, 2022) (“[B]ecause appraisal will not dispose of any claims or defenses, the Court does not treat the motion to compel appraisal as one for summary judgment.”).

As the parties have agreed that appraisal is appropriate, their request will be granted. Further, the parties request a stay during appraisal. The Hurricane Ian Scheduling Order contemplates such relief if the parties agree that appraisal is appropriate. (Doc. 5 at 2.) Thus, the case will be stayed. All deadlines and events in the Hurricane Ian Scheduling Order (Doc. 5) are suspended.

According, it is hereby **ORDERED**:

1. Defendant’s Motion to Compel Appraisal and Stay (Doc. 11) is **GRANTED**.
2. This case is **STAYED** pending appraisal, and the Clerk must add a stay flag to the file.
3. The parties are **DIRECTED** to file a joint report on the status of appraisal on or before **September 28, 2023**, and every ninety days thereafter until appraisal has ended.

4. Within 15 days of a signed appraisal award, the parties are **DIRECTED** to jointly notify the Court of (a) what issues, if any, remain for the Court to resolve; (b) whether the stay needs to be lifted; and (c) how this action should proceed, if at all.
5. If the parties cannot agree on the selection of appraisers and an umpire, they must notify the undersigned by **July 14, 2023**.

ORDERED in Fort Myers, Florida this June 30, 2023.



Kyle C. Dudek
United States Magistrate Judge

Copies: All Parties of Record